

COUNSEL LISTED ON SIGNATURE PAGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, ABBOTT
MOLECULAR INC., and ABBOTT
LABORATORIES INC.,

Plaintiffs,

v.

DAKO NORTH AMERICA, INC. and
DAKO DENMARK A/S,

Defendants.

Case No. C-05-03955 MHP

**STIPULATION AND [PROPOSED] ORDER
REGARDING BIFURCATION OF
DAMAGES**

Judge: Marilyn Hall Patel

AND RELATED COUNTERCLAIMS

WHEREAS, the Court entered an August 27, 2008 Order re Case Schedule adopting the parties proposed case schedule, and setting trial for May 12, 2009;

WHEREAS, the parties have since agreed that the issue of damages will be better addressed after resolution of liability;

Plaintiffs The Regents of the University of California, Abbott Molecular Inc., and Abbott Laboratories Inc. and defendants Dako North America, Inc. and Dako Denmark A/S (“Dako”) hereby stipulate as follows:

- 1) Trial in this matter be bifurcated into two phases;

1 2) The first phase will address all issues triable to a jury other than damages
2 (including infringement, invalidity, and willfulness), and defendants' equitable claim of
3 inequitable conduct, and will proceed in accordance with the schedule adopted by the Court in its
4 August 27, 2008 Order re Case Schedule;

5 3) If following the first phase any defendant is found to infringe a valid and
6 enforceable patent claim and the parties are unable to reach agreement as to the amount of
7 damages that should be assessed, a second phase will address the issue of damages;

8 4) The parties agree to meet and confer regarding the schedule for damages-related
9 expert disclosures and discovery following resolution of liability;

10 5) In the event the court declines to bifurcate damages, the parties agree to meet and
11 confer to schedule and complete any remaining damages discovery and damages-related expert
12 disclosures within the current schedule set forth in the August 27, 2008 Order re Case Schedule.

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

1 Dated: November 17, 2008

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THE REGENTS OF THE UNIVERSITY OF
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INC., and ABBOTT LABORATORIES INC.

14 Dated: November 17, 2008

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23 DAKO NORTH AMERICA, INC. and DAKO
24 DENMARK A/S

ORDER

Pursuant to the foregoing Stipulation, and good cause appearing therefore, the Court hereby ORDERS:

- 1) Trial in this matter be bifurcated into two phases;
- 2) The first phase will address all issues triable to a jury other than damages (including infringement, invalidity, and willfulness), and defendants' ~~equitable claim of inequitable conduct~~, and will proceed in accordance with the schedule adopted by the Court in its August 27, 2008 Order re Case Schedule; *
- 3) If following the first phase any defendant is found to infringe a valid and enforceable patent claim and the parties are unable to reach agreement as to the amount of damages that should be assessed, a second phase will address the issue of damages;
- 4) The parties agree to meet and confer regarding the schedule for damages-related expert disclosures and discovery following resolution of liability.

IT IS SO ORDERED.

Dated: November 24, 2008



*** The scheduling of trial on defendants' inequitable conduct is deferred until motions for summary judgment are heard.**